

This letter describes sales in interstate commerce and the manufacturing machinery and equipment exemption from sales tax. See 86 Ill. Adm. Code 130.605 and 86 Ill. Adm. Code 130.330. (This is a GIL).

November 8, 2005

Dear Xxxxx:

This letter is in response to your letter dated July 7, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC is currently required to file annual Illinois sales and use tax returns as an out-of-state vendor; as a result, we have only been subject to the state sales tax of 6.25% on equipment delivered to Illinois customers.

In the near future, we will be signing a manufacturing and supply agreement with XYZ based in CITY, Illinois whereby XYZ will manufacture and supply ABC with cogeneration equipment. ABC will purchase the labor and consign the material required to fully assemble and test said equipment. ABC will sell the completed units directly from XYZ's facility.

It is our understanding based on Illinois regulations that ABC's status will change from an out-of-state vendor to an in-state vendor resulting in Illinois taxable sales being subject to both state and county sales taxes. However, proceeds from a retail sale whereby a common carrier receives physical possession of the equipment in Illinois and then transports said equipment to a destination outside of Illinois will not be subject to tax so long as ABC has the bill of lading on file.

With respect to purchases, ABC will provide vendors with Form ST-587, Equipment Exemption Certificate, to receive a manufacturing exemption from the Illinois sales and use tax.

We are kindly requesting written advice to confirm that your office concurs with the above conclusions.

If you would like additional information or have any questions, please contact me.

## **DEPARTMENT'S RESPONSE**

### Nexus:

The following guidelines may be useful to you in determining whether your company would be considered a retailer subject to sales tax collection obligations.

Whether a retailer is subject to Illinois Retailers' Occupation Tax (sales tax) liability or is required to collect Illinois Use Tax from its Illinois customers depends upon whether that retailer has sufficient "nexus" with the State of Illinois so that the retailer will be subject to Illinois law. The following information outlines the principles of nexus.

An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Another type of retailer is the retailer maintaining a place of business in Illinois. The definition of a "retailer maintaining a place of business in Illinois" is described in 86 Ill. Adm. Code 150.201(i), enclosed. This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801. The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

In general, the imposition of the various local sales taxes in Illinois takes effect when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. See 86 Ill. Adm. Code 270.115(b), enclosed. The tax rate is fixed by the location of the seller, not the delivery location. The fact that the item being sold is shipped from out-of-State or from another Illinois location is immaterial for purposes of local taxes if the sale occurs through order acceptance in an Illinois jurisdiction imposing a local tax. For these transactions the local tax will be incurred.

If a purchase order is accepted outside the State, but the property being sold is located in an inventory of the retailer which is located in an Illinois jurisdiction that has imposed a local tax (see, for example, Section 270.115(b)(3)), then the location of the property at the time of sale will determine where the seller is engaged in business for the purpose of determining the imposition of applicable local sales taxes. If both the purchase order acceptance and the location of the property being purchased are outside of the State of Illinois, such sales would only be subject to the Illinois Use Tax at the rate of 6.25%.

Although the regulation cited above (86 Ill. Adm. Code 270.115) deals with the municipal home rule taxes, the principles outlined in this regulation apply to all local taxes administered by the Department.

Sales in interstate commerce:

The Retailers' Occupation Tax does not extend to gross receipts from sales in which the seller is obligated, under the terms of his agreement with the purchaser, to make physical delivery of the goods from a point in this State to a point outside this State, not to be returned to a point within this State, provided that delivery is actually made. See 86 Ill. Adm. Code 130.605(b). Nor does the tax apply to gross receipts from sales in which the seller, by carrier (when the carrier is not also the purchaser) or by mail, under the terms of his agreement with the purchaser, delivers the goods from a point in this State to a point outside this State not to be returned to a point within this State. The fact that the purchaser actually arranges for the common carrier or pays the carrier that effects delivery does not destroy the exemption. However, it is critical that the seller is shown as the consignor or shipper on the bill of lading. If the purchaser is shown as either the consignor or the shipper, the exemption will not apply. See 86 Ill. Adm. Code 130.605(c).

Manufacturing Machinery and Equipment:

As provided in the Retailers' Occupation Tax Act, the manufacturing machinery and equipment exemption is available for machinery and equipment used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See 35 ILCS 120/2-5(14) and 86 Ill. Adm. Code 130.330. The exemption also extends to repair and replacement parts as long as the parts are incorporated into machinery and equipment that is exempt under the regulation. For further information you may want to review letters on our web site such as ST 00-0035-PLR.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote  
Associate Counsel

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